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Procurement Laws: A crane in construction site

Procurement Laws

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Most countries have public procurement laws that set out the rules and processes to be followed for all forms of public procurement. Often these laws apply more generally to procurement of PPPs, unless there is a specific PPP law or concession law which provides otherwise. Civil law countries may also have a separate procurement mechanism for delegated management contracts.

Role of International Financial Institutions

Most international financial institutions, such as World Bank, the European Bank for Reconstruction and Development (EBRD) and the Inter-American Development Bank (IDB), require a transparent, competitive bidding process as a condition of financing for major Infrastructure projects. In most cases the process to be followed for procurement of PPP projects that are supported by IFIs are included in their procurement guidelines.

While a formal procurement process may be time-consuming and administratively burdensome and may not be appropriate in ALL cases, it has the advantages of:

- Creating greater transparency.
- Creating a level playing field for bidders.
- Giving a project greater legitimacy (particularly if there is a change of government and allegations are made of cronyism in awarding the contract).
- Setting out clearly the qualities and experience (and financial strength) that each bidder needs to have before it can bid.
- Assisting the government to achieve better value for money through market testing.

World Bank Procurement Guidelines

Information on World Bank procurement policy can be found on the World Bank Procurement Website.

Effective from 1 July 2016, the World Bank implemented its new Procurement Framework. Access customized e-learning modules and other key resources here. These resources will help you become familiar with the World Bank's new Procurement Framework.

For projects prior to 1 July 2016 the World Bank had developed a series of policies and procedures governing procurement and selection of consultants in Bank-financed projects, including Procurement Guidelines under IBRD Loans and IDA Credits & Grants issued in January 2011.

World Bank has developed a methodology for assessing a country's procurement system, together with suggestions for updating and modifying a system, see Benchmarking Public Procurement 2015, a pilot report assessing public procurement systems in 10 economies and Benchmarking Public Procurement 2017 : Assessing Public Procurement Regulatory Systems in 180 Economies.

The World Bank has also developed a guidance note on drafting public procurement regulations: Drafting Public Procurement Regulations - English version.

For an overview of Green Public Procurement (GPP), the Report "An Overview of Green Reforms in Country Procurement Systems" highlights the institutional frameworks necessary for mainstreaming GPP practices across government. Designed to equip practitioners with key insights, the report covers essential considerations for the design and implementation of GPP reforms. Drawing on a diverse range of country examples, it also provides links to handbooks and tools for further guidance.

UNCITRAL Guidance

Another useful source of guidance in this area, specifically related to procurement in infrastructure projects, is UNCITRAL – Legislative Guide on Privately finance Infrastructure Projects, 2000, in Chapter III and Recommendations 14 to 29. This provides guidance and draft legislative provisions. This can also be found in different languages on the UNCITRAL website. There is also UNCITRAL Model Law and guidance on Public Procurement, 2011 on general public procurement.

Regional Procurement Laws and Directives

European Union

Three directives were passed in 2014 (which will come into force in member states by April 2016 at the latest) as a package of legal acts designed to modernize public procurement rules across the European Union (EU). The reforms will allow public authorities to optimize their use of public procurement. Public contracts that are covered by the European directives are valued at around EUR 420 billion, making it a key driver of the EU economy.

European Union - EU Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement. This directive replaces the previous directive **Directive 2004/18/EC** on public procurement.

The water, energy, transport and postal services sectors are excluded from directive 2014/24/EU. Instead, they are regulated by Directive 2014/25/EU.

Procurement of concession contracts is governed by EU Directive 2014/23/EU on Award of concession contracts. Concessions are defined as contracts for pecuniary interest by means of which one or more contracting authorities or contracting entities entrusts the execution of works, or the provision and the management of services, to one or more economic operators. The consideration for the works or services consists in the right to exploit the works or services or that right together with payment. The right to exploit the works or services implies the transfer to the concessionaire of an operating risk of economic nature involving in particular, the possibility that the concessionaire will not recoup the investments made. Therefore this would cover a broad range of PPPs.

Earlier documents included:

- Rules applicable to Institutionalised Public-Private Partnerships (IPPP), with an interpretative communication in 2008.
- 2004 Green Paper on public-private partnerships
- Mobilising private and public investment for recovery and long term structural change: developing Public Private Partnerships

OECD

The OECD procurement page, include information on public procurement strategies, a public procurement toolbox and a publication on Good Practices in OECD Countries.

WTO

The WTO's work on government procurement aims to promote transparency, integrity and competition in this market, see WTO and government procurement.

EBRD

The European Bank for Reconstruction and Development (EBRD) Procurement Policies and Rules (PP&R) sets out the Bank's polices and rules governing procurement of good, works, services and consultancy services contracted by the Bank's clients in Bank-financed projects.

National Laws

ICLG Public Procurement Laws and Regulations - ICLG Public Procurement covers common issues including application of the law to entities and contracts, award procedures, exclusions and exemptions, remedies, privatizations and PPPs in 17 jurisdictions.

Africa's public procurement and entrepeneurship research initiative has links to laws and procurement authorities in North Africa and Sub-Saharan Africa

Related Content

- **Laws and Regulations**
- **PPP Legal Foundations - Further Reading**
- **Legislation and Laws - General and Sector Specific**
- **Regulatory Systems and Sector Overview**
- **Country Profiles**

Additional Resources

- Benchmarking
- Procurement Processes and Bidding Documents
- Standardized Agreements, Bidding Documents and Guidance Manuals
- Benchmarking Infrastructure Development: PPP Regulatory Landscape - Assessing Quality and Exploring Reform

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